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October 15, 2007

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RE: Institutional Options for Delta Vision Governance

Dear Mr. Kirlin:

You asked this office to assist you in evaluating different governance options for implementing the recommendations of the Delta Vision Blue Ribbon Task Force. By January 1, 2008, the Task Force will forward its recommendation on a "durable vision for sustainable management of the Delta" to the Delta Vision Committee and the Governor. (Governor's Exec. Order No. S-17-06 (Sept. 28, 2006).) By October 31, 2008, the Task Force will forward a Strategic Plan for implementing the Delta Vision. (*Ibid.*) Part of that Strategic Plan will address recommendations on institutional changes and funding mechanisms necessary for sustainable management of the Delta. (*Ibid.*)

This letter examines different agencies in California that perform functions similar to what might be needed in a Delta governance entity. Because this entity will have to be compatible with the state's existing regulatory and budgetary framework, our analysis intentionally focuses on California agencies and institutions. The analysis is organized around four main issues that we understand would have to be addressed in developing a new Delta governance program:

- (1) Integrating state planning and policy objectives into the local land use decision making process for the Delta;
- (2) Providing for coordination between state and federal regulatory agencies;
- (3) Incorporating non-regulatory options for achieving the state's planning and policy objectives in the Delta; and
- (4) Establishing reliable financing mechanisms.

We identified these issues after reviewing the conclusions and recommendations made in prior documents concerning the Delta, after conversations with you, and after considering discussions at Blue Ribbon Task Force meetings.^{1/}

A fifth factor that permeates our analysis is that any new or reorganized existing entity, or groups of entities, must have the necessary authority to carry out the actions that will achieve the Delta Vision. The Little Hoover Commission discussed this issue at length in its paper, *Still Imperiled, Still Important: The Little Hoover Commission's Review of the CALFED Bay-Delta Program* (2005). This analysis will not repeat the observations and conclusions in the earlier paper, however, it does illustrate how the breadth of different types of authorities has influenced the ability of the different types of agencies to accomplish their missions.

I. Regulatory and Planning Options for Integrating State Objectives Into the Delta Land Use Decision Making Process

One theme that has arisen in the dialogue about a new Delta Vision is the important role that the Delta plays in providing environmental and economic services to the entire State. (See generally, *Status and Trends of the Delta-Suisun Services*, May 2007.) These services, ranging from water supply and water quality management to ecosystem benefits and transportation, are all threatened by increased population pressures in the region and resulting urbanization. (*Id.* at pp. 4, 10-30, 46-47.) Land use decisions that reflect the local concerns or objectives of the Delta's cities and counties have the potential to constrain state management choices and even make some of these choices unavailable. (*Id.* at p. 46.) The larger discussion of a Delta Vision is therefore now including suggestions about the state influencing or exercising a greater level of control over some aspects of land use decisions within the Delta region.

Generally, California's Planning and Zoning Law places the responsibility for land use planning squarely in the hands of cities and counties. (Gov. Code, § 65000 et seq.) The law requires cities and counties to develop general plans for the long-term physical development of their jurisdictions. (*Id.*, § 65300.) These general plans have been referred to as "a 'constitution' for future development. (*Gonzales v. County of Tulare* (1998) 65 Cal.App.4th 777, 784 citing *Leshar Communications, Inc. v. City of Walnut Creek* (1990) 52 Cal.3d 531, 540.)

1. A memorandum to the Delta Protection Commission from former Executive Director Margit Aramburu (Oct. 10, 2003) regarding the "Future of the Delta Protection Commission" previously explored some of the issues discussed in this letter. That memorandum was in turn based on a May 1994 report prepared by this office for the Delta Protection Commission entitled "Implementation of the Resource Management Plan for the Primary Zone of the Delta."

Still, courts recognize that while planning and zoning are generally municipal matters, “where the ecological and environmental impact of land use affect the people of the entire state, they can no longer remain matters of purely local concern.” (*CEED v. California Coastal Zone Conservation Com.* (1974) 43 Cal.App.3d 306, 327.) In several instances the courts and the Legislature have determined that a regional land use agency may be necessary to transcend local boundaries and address environmental problems that are regional in nature. (*People ex rel. Younger v. County of El Dorado* (1971) 5 Cal.3d 480, 493-494 [holding that Tahoe Regional Planning Compact did not violate constitutional protections of local police powers].) A regional approach may be particularly compelling where existing local land use regulation has proven inadequate to protect a resource of statewide or national importance. (*Id.* at p. 494; see also *ibid.*, fn. 16 [citing law review article suggesting that regional land use authority to protect Lake Tahoe needed due to “unwillingness of the five counties to subordinate sectarian economic interests in rapid growth and development of the lake basin to the national interest in preserving the lake as a natural resource . . .”].)

Several regional land use approaches currently exist in California. The Delta Protection Commission, the San Francisco Bay Conservation and Development Commission, and the Tahoe Regional Planning Agency are agencies that have varying degrees of regional land use authority. The California Coastal Commission has land use authority over the entire state coastal zone. Each of these agencies functions somewhat differently in its regional land use role based on the breadth and limitations in its respective enabling legislation.

A. The Delta Protection Commission

Purpose: The Delta Protection Commission was established in 1992 by the Johnston-Baker-Andal-Boatwright Delta Protection Act. (Pub. Resources Code, § 29700, et seq.) In the Act the Legislature declares “that the Sacramento-San Joaquin Delta is a natural resource of statewide, national, and international significance, containing irreplaceable resources. . . .” (*Id.*, § 29701.) Resource values range from agricultural lands to flood control to wildlife habitat to cities and towns. (*Id.*, §§ 29703-29705, 29708.) Deterioration of the Delta’s resources and the potential for further deterioration threaten the Delta’s ecology, its fish and wildlife resources, recreation, and economic productivity. (*Id.*, § 29706.) “[T]o protect the regional, state, and national interests for the long-term agricultural productivity, economic vitality, and ecological health of the delta resources, it is necessary to provide and implement delta land use planning and management by local governments.” (*Id.*, § 29707.)

Geographic Scope: The geographic area addressed in the Delta Protection Act is extensive. The Act divides the Delta into a primary and secondary zone. The primary zone is defined by statute with reference to the definition of the Delta in the Water Code. (*Id.*, § 29738.)

The primary zone encompasses approximately 500,000 acres. (See Delta Protection Commission website, <http://www.delta.ca.gov/commission/default.asp>.) The secondary zone includes:

all the delta land and water area within the boundaries of the delta not included within the primary zone, subject to the land use authority of local government, and that includes the land and water areas as shown on the map titled "Delta Protection Zones" on file with the State Lands Commission." (*Id.*, § 29731.)

The secondary zone encompasses approximately 238,000 acres. (See Delta Protection Commission website, <http://www.delta.ca.gov/commission/default.asp>.) The Act limits the Delta Protection Commission's land use authority to the primary zone, but allows the Commission to comment on projects within the secondary zone that may impact the primary zone. (Pub. Resources Code, §§ 29764, 29770, subd. (d).)

Resource Planning Function: The Act calls for the Commission to adopt a regional plan, and for local governments to amend their general plans to conform to the regional plan. Specifically, the Delta Protection Commission is charged with adopting "a comprehensive long-term resource management plan for land uses within the primary zone of the delta." (*Id.*, § 29760, subd. (a).) Local governments are then required to submit to the Delta Protection Commission amendments to their general plans necessary to bring them into conformance with the Commission's Resource Management Plan. The Commission can only approve the amendments if it finds, among other things, that they conform to the Plan. (*Id.*, §§ 29763, 29763.5.) The local governments must then adopt the amendments within 120 days of approval. (*Id.*, § 29763.8.)

Land Use Permitting Function: Permit jurisdiction over proposed land use projects remains with the local jurisdictions. (*Id.*, § 29770, subd. (a).) Any person aggrieved by the action of a local government or agency in implementing the Resource Management Plan can appeal the action to the Delta Protection Commission on the ground that the action is inconsistent with the Plan. (*Id.*) Absent such an appeal, the Commission itself may, by majority vote, appeal a local government or local agency action on the ground that the action is inconsistent with the resource management plan. (*Id.*, § 29770, subd. (b).) If a local action is appealed to the Commission, the Commission must either deny the appeal or remand the matter to the local government or agency for reconsideration. (*Id.*, § 29771.) It is then the duty of the local government or agency to modify the appealed action and resubmit the matter for review to the Delta Protection Commission. (*Ibid.*) A proposed local action appealed to the Commission is not final until the Commission adopts findings that the action is consistent with the Resource Management Plan, the approved portions of the local government general plans, and the Delta Protection Act. (*Ibid.*)

Enforcement Function: The Delta Protection Act does not specify an enforcement function for the Delta Protection Commission, other than the ability of a majority of the Commission to appeal the decision of a local government for Commission consideration. Direct enforcement over actions in violation of the Resource Management Plan remains with the local governments.

Membership: The Delta Protection Commission is governed by a 23-member board. (*Id.*, § 29735.) Thirteen members are from local governments and local reclamation districts. (*Id.*, § 29735, subds. (a) - (c).) Seven members are from state agencies and three are governor appointees. (*Id.*, § 29735, subds. (d) - (k).)

B. The San Francisco Bay Conservation and Development Commission

Purpose: The San Francisco Bay Conservation and Development Commission (BCDC) was established in 1965 by the McAteer-Petris Act as a temporary state agency charged with developing a plan for the long-term use of the Bay and for regulating development in and around the Bay while the plan was being prepared. (Gov. Code, § 66600 et seq.) BCDC completed its plan in 1968. (San Francisco Bay Plan, p. 1.) In 1969, the Legislature amended the McAteer-Petris Act to make BCDC a permanent state agency and to incorporate the policies of the Bay Plan. (*Id.* at p. 2; Gov. Code, §§ 66651, 66659.)

In the McAteer-Petris Act, the Legislature declared the public's interest in the San Francisco Bay "as the most valuable single natural resource of an entire region" and in having the Bay and its shoreline analyzed, planned, and regulated as a unit. (Gov. Code, § 66600.) The emphasis on having a regional planning layer was based, in part, on the finding that "uncoordinated, haphazard filling in San Francisco Bay threatens the bay itself and is therefore inimical to the welfare of both present and future residents of the area surrounding the bay." (*Id.*, § 66601.)

Geographic Scope: The geographic area addressed in the McAteer-Petris Act is extensive. It includes the San Francisco Bay itself, incorporating all sloughs and marshlands lying between mean high tide and five feet above mean sea level; tidelands, and submerged lands. (Gov. Code, § 66610, subd. (a).) Also included are a 100-foot strip of the shoreline, certain saltponds and managed wetlands, and certain waterways. (*Id.*, § 66610, subds. (b)-(e).) The geographic scope spans numerous cities in nine counties. (*Id.*, § 66620, subd. (h).)

Resource Planning Function: The McAteer-Petris Act of 1965 directed BCDC to develop a plan for the "conservation of the water of the bay and the development of its shoreline." (Gov. Code, § 66603; San Francisco Bay Plan, p. 1.) BCDC spent three years

undertaking a detailed study of the Bay, which resulted in its San Francisco Bay Plan. (*Ibid.*) The Bay Plan has dual objectives: (1) protect the Bay as a great natural resource for the benefit of present and future generations; and (2) develop the Bay and its shoreline to their highest potential with a minimum of Bay fill. (San Francisco Bay Plan, p. 13.) The dual ecological and development objectives are reflected in the plan's major proposals, which emphasize maritime port development, deepening ship channels, developing and preserving land for water-related industries, developing waterfront parks and recreation areas, expanding airport facilities on land rather than on bay fill, maintaining wildlife refuges, and encouraging private investment in shoreline development. (*Id.*, at p. 4.)

Permitting Function: Following acceptance of the San Francisco Bay Plan, the Legislature amended the McAteer-Petris Act to establish BCDC as the permanent entity for carrying out the plan by issuing or denying permits for proposed projects involving placement of fill, extracting materials, or making any substantial change in use of any water, land or structure within BCDC's jurisdiction. (Gov. Code, §§ 66604, 66632, subd. (a), 66651; San Francisco Bay Plan, p. 5.) Pursuant to BCDC's permitting requirements, projects located in the Bay or in certain designed "priority use" shoreline areas must be either "necessary to the health, safety or welfare of the public in the entire bay area," or consistent with the provisions of the McAteer-Petris Act and the Bay Plan. (Gov. Code, § 66632, subd. (f); San Francisco Bay Plan, pp. 6-7.) The enforceable policies of the McAteer-Petris Act and the Bay Plan are intended to limit the amount of new bay fill, regulate development of the shoreline to accommodate water-oriented priority uses, minimize harmful effects on the Bay and maximize public access to the Bay. (See, e.g., Gov. Code, §§ 66602, 66605; San Francisco Bay Plan, pp. 31-74.) In shoreline areas that are not designated for water-oriented priority uses, permits may be denied only if the project does not provide maximum feasible public access to the Bay. (Gov. Code, § 66632.4.)

Enforcement Function: The McAteer-Petris Act specifies BCDC's enforcement mechanisms. These include the authority of the executive director and the Commission as a whole to issue cease and desist orders and to seek injunctive relief in superior court. (Gov. Code, §§ 66637, 66638, 66640.) The Legislature has also authorized BCDC to impose administrative civil penalties and to seek court orders imposing civil penalties and exemplary damages in varying amounts. (*Id.*, §§ 66641, 66641.5, 66641.6.) In addition, any person who undertakes activities requiring a BCDC permit without obtaining one is guilty of a misdemeanor. (*Id.*, § 66632, subd. (f).) Monies recovered by BCDC are deposited into the Bay Fill Clean-Up and Abatement Fund. (*Id.*, § 66647, subd. (a)(3).)

Membership: BCDC is governed by a 27-member board. Twenty of these members are locally based, including nine representing Bay area counties, four representing Bay area cities, and seven public members who are residents of the San Francisco Bay area. (Gov. Code, \

§ 66620, subds. (h) - (j).) Five members are representatives of designated state agencies. (*Id.*, § 66620, subds. (c) - (g).) Two members are federal agency representatives. (*Id.*, § 66620, subds. (a) - (b).)

Suisun Marsh Protection: BCDC also has jurisdiction over activities in the Suisun Marsh, an area consisting of approximately 55,000 acres of marshland and 30,000 acres of bays and sloughs that constitute a “unique and irreplaceable resource to the people of the state and nation.” (Pub. Resources Code, §§ 29002, 29101.) In contrast to the overall San Francisco Bay Plan, of which the Suisun Marsh Protection Plan is a part (*id.*, § 29008), the legislature has determined that Suisun Marsh is of such high ecological value and function that many areas should not be subject to extensive human intrusion. (*Id.*, § 29011.) The Act emphasizes the importance of the marsh’s role in providing wintering habitat for waterfowl of the Pacific Flyway and critical habitat for other wildlife, including endangered, rare or unique species. (*Id.*, § 29002.) It also recognizes that the value of the marsh stems from its character as a “relatively large expanse of unbroken native habitat” with diverse vegetation and aquatic conditions. (*Ibid.*)

Under the Suisun Marsh Preservation Act, BCDC provides state management and planning over the marsh, but implementation is heavily reliant on local government and local land use planning procedures and enforcement. (Pub. Resources Code, § 29005.) To that end, Solano County is responsible for preparing the local protection program for the marsh, which must be consistent with the overall Suisun Marsh Protection Plan, and which must contain enforceable standards for issues such as diking, flooding, draining, filling, and dredging of sloughs, wetlands, and marshes and regulation of development for the purpose of preserving the marsh. (*Id.*, §§ 29400, 29401, 29403.) BCDC has certified the local protection program as adequate, finding it is in conformity with the Act and the Suisun Marsh Preservation Plan. (*Id.*, § 29415.) BCDC is responsible for reviewing the plan at least once every five years after certification to determine whether it is being effectively implemented in conformance with the Act. (*Id.*, § 29422.)

Any person proposing development in the Suisun Marsh is required to obtain a marsh development permit, with certain statutory exceptions. (Pub. Resources Code, §§ 29500, 29508.) The permit for those actions proposed in the primary management area of the marsh must be issued by BCDC, but BCDC may delegate the permitting function to the County of Solano or the cities of Suisun City, Fairfield or Benicia for any development that does not have a significant impact on the marsh. (*Id.*, §§ 29501, 29109.) Permits for actions proposed in the secondary management area must be obtained from the local government having jurisdiction over the land in which the proposed development is to occur. (*Id.*, § 29502.) Local government permit decisions may be appealed to BCDC. (*Id.*, §§ 29501, subd. (d), 29504, 29522.)

BCDC may issue cease and desist orders and penalties for violations of the Suisun Marsh Preservation Act in conformance with its general authority under the McAteer-Petris Act. (Pub. Resources Code, § 29601; see also *id.*, §§ 29610, 29611.)

C. The Tahoe Regional Planning Agency

Purpose: The Tahoe Regional Planning Agency was established in 1969 as a bi-state entity under the Compact Clause of the United States Constitution. (*Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency* (2002) 535 U.S. 302, 309 [hereafter "*Tahoe-Sierra*"].) The Tahoe Regional Planning Compact describes the Tahoe region as exhibiting "unique environmental and ecological values which are irreplaceable." (Compact, Art. 1, subd (a)(3).) Rapid development in the Lake Tahoe basin in the 1960s threatened Lake Tahoe's legendary clarity, leading the two states to conclude that regional land use control was necessary. (*Tahoe-Sierra, supra*, at pp. 309-310.)

Geographic Scope: The Tahoe Regional Planning Agency (TRPA) has land use authority in the Tahoe region. (Compact, Art. 1, subd. (b); *id.*, Art. 5, subds. (c), (g); *id.*, Art. VI, subd. (a).) The region encompasses 501 square miles within California and Nevada, with lands in the jurisdiction of the states, five counties, one city, and the U.S. Forest Service. (Compact, Article II, subd. (a); *Tahoe-Sierra, supra*, at pp. 308-309.)

Resource Planning Function: The Tahoe Regional Planning Compact gives TRPA the duty to establish environmental threshold carrying capacities and to adopt a regional plan and implementing ordinances to achieve and maintain those threshold carrying capacities. (Compact, Article I, subd. (b); Art. V, subds. (b), (c).) The regional plan, much like a local government general plan, includes plans for land use, transportation, conservation of natural resources, recreation, and public facilities. (Art. V, subd. (c).) "Whenever possible without diminishing the effectiveness of the regional plan," TRPA is to address "matters which are general and regional in application," with the states and local governments enacting local rules and regulations that conform to the regional plan. (Art. VI, subd. (a).)

Land Use Permitting Function: With limited exceptions, all development proposed within the Tahoe Region must be reviewed and approved by TRPA as being in compliance with the regional plan. (Art. VI, subd. (b).) For each project that TRPA approves, it must make findings that the project will not adversely affect the regional plan or cause the environmental threshold carrying capacities of the region to be exceeded. (*Ibid.*; *id.*, Art. V, subd. (g).)

Enforcement Function: The Compact authorizes TRPA to bring enforcement actions in the Tahoe region to ensure compliance with the regional plan. (Art. VI, subd. (k).)

Membership: TRPA is governed by a fifteen-member board, with California and Nevada each having seven voting members. (Compact, Art. III, subd. (a).) The California delegation of seven includes three local government representatives and four state representatives. (*Ibid.*) The fifteenth, non-voting member is appointed by the President of the United States. (Art. X, § 3.) The Compact specifies that the TRPA board shall be assisted by an advisory planning commission, appointed by the TRPA, and comprised of individuals holding certain federal, state, and local planning and regulatory positions. (*Id.*, Art. III, subd. (h).)

D. The California Coastal Commission

Purpose: The California Coastal Commission was established by the California Coastal Act of 1976. (Pub. Resources Code, § 30000, et seq.)^{2/} In the Act, the Legislature describes the coastal zone as a delicately balanced ecosystem, and that “the permanent protection of the state's natural and scenic resources is a paramount concern to present and future residents of the state and nation.” (*Id.*, § 30001, subds. (a), (b).) The Legislature also recognized the economic importance of development in the coastal zone and its role in orderly economic development statewide. (*Id.*, § 30001.2.)

The Coastal Act establishes five state goals for the coastal zone, including to:

- “(a) Protect, maintain, and, where feasible, enhance and restore the overall quality of the coastal zone environment and its natural and artificial resources.
- (b) Assure orderly, balanced utilization and conservation of coastal zone resources taking into account the social and economic needs of the people of the state.
- (c) Maximize public access to and along the coast and maximize public recreational opportunities in the coastal zone consistent with sound resources conservation principles and constitutionally protected rights of private property owners.

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2. The California Coastal Act of 1976 was preceded by the Coastal Zone Conservation Act of 1972, an initiative measure popularly known as Proposition 20. The 1972 Act created a statewide commission and six regional commissions charged with preparing a plan for land use and development within the coastal zone, to be submitted to the Legislature by December 1975. The commissions submitted a proposed coastal plan to the Legislature as directed by the statute. The following year the Legislature enacted the Coastal Act of 1976. (See generally, *Marine Forests Society v. California Coastal Commission* (2005) 36 Cal.4th 1, 18-19.)

(d) Assure priority for coastal-dependent and coastal-related development over other development on the coast.

(e) Encourage state and local initiatives and cooperation in preparing procedures to implement coordinated planning and development for mutually beneficial uses, including educational uses, in the coastal zone.” (*Id.*, § 30001.5.)

These five goals are carried out through policies in the Act that are intended to serve as standards for determining the adequacy of local coastal programs and the permissibility of proposed development projects. (*Id.*, § 30200.) The policies are specific in the areas of public access, recreation, marine resources, land resources, development, and industrial development. (*Id.*, §§ 30210-30265.5.)

The Coastal Act created the California Coastal Commission and gave it “a general mandate to implement the Coastal Act to preserve and protect the California coast.” (*Feduniak v. California Coastal Commission* (2007) 148 Cal.App.4th 1346, 1363; see also Pub. Resources Code, § 30300 [creating Coastal Commission within Resources Agency]; § 30331[designating Coastal Commission as successor to statewide and regional commissions under 1972 Act].)

Geographic Scope: The California Coastal Act addresses preservation and development in the coastal zone. (Pub. Resources Code, §30001.) The coastal zone stretches from the Oregon border to Mexico, including a band that extends out to the state’s 3-mile jurisdictional limit in ocean waters and inland generally 1000 yards from the mean high tide of the sea. (*Id.*, § 30103.) This area includes roughly 287 miles of shoreline and 1.5 million acres of land. (See California Coastal Commission, *Why it Exists and What it Does*, p. 3, available at http://www.coastal.ca.gov/publiced/Comm_Brochure.pdf.) The Commission maintains maps depicting the precise boundary of the coastal zone, as amended from time to time. (Pub. Resources Code, §§ 30103, 30150.)

Resource Planning Function: Through the Coastal Act, the Legislature adopted into law nearly all of the recommendations in the coastal plan developed by its predecessor statewide and regional commissions under the 1972 Coastal Zone Conservation Act. (See *supra* fn. 2.) The Coastal Act itself thus serves as “a comprehensive scheme to govern land use planning for the entire coastal zone of California.” (*Yost v. Thomas* (1984) 36 Cal.3d 561, 565.) The Coastal Act specifies detailed statewide policies related to resource protection, land use and development, public access to the coast, recreation and industrial development. (Pub. Resources Code, § 30210-30265.5.) These policies serve as minimum standards for coastal development. (*Id.*, §§ 30200 [policies are standards for judging coastal development permit requests], 30522

[Coastal Act standards are minimum required in local coastal program]; *Schneider v. California Coastal Commission* (2006) 140 Cal.App.4th 1339, 1346 [same].)

At the same time that the Coastal Act establishes the statewide plan for the coast, the Act specifically relies on local government land use planning procedures and enforcement for achieving its goals. (*Id.*, § 30004, subd. (a).) Each local government lying wholly or partially within the coastal zone is therefore required to prepare a local coastal program for that portion of its jurisdiction in the coastal zone. (*Id.*, § 30500.) Local governments are required to submit their local coastal programs to the Coastal Commission for certification that they comply with the Coastal Act policies described in chapter 3 of the Act, commencing with section 30200. (*Id.*, §§ 30510, 30512, 30512.2.) Amendments to local coastal programs require Coastal Commission certification as well. (*Id.*, § 30514, subd. (a).)

Land Use Permitting Function: The Coastal Act gives the Coastal Commission permit jurisdiction over proposed development within the coastal zone. (*Id.*, § 30600.) Any person wishing to perform or undertake any development in the coastal zone, with limited exceptions, must obtain a coastal development permit. (*Id.*, § 30600, subd. (a).) The term "person" is broadly defined to include the state, local governments, and any of their agencies or political subdivisions. (*Ibid*; *id.*, § 21066.) Where a local government has a certified local coastal program, the Act delegates the permitting function to the local government to issue a coastal development permit. (*Id.*, § 30519.) Specified categories of local government decisions on coastal development permits, including those concerning major public works projects or approving development in the more sensitive areas of the coast (e.g., in proximity to wetlands, beaches and between the first public road and the sea), can be appealed to the Coastal Commission as a whole.^{3/} (*Id.*, § 30603.)

In addition to permit jurisdiction, the Coastal Commission also has jurisdiction for determining the conformity of federal actions, including federal activities and federally licensed activities, outside the coastal zone that may affect resources within the coastal zone with the Coastal Act pursuant to the federal Coastal Zone Management Act. (*Id.*, § 30008; *id.*, § 30330; see *Sierra Club v. California Coastal Commission* (2005) 35 Cal.4th 839, 849.)

Enforcement Function: The Coastal Act provides for the issuance of cease and desist orders by either the Commission's executive director or the Commission itself to prevent or stop

3. The Commission retains original permit jurisdiction over tidelands, submerged lands or public trust lands. (Pub. Resources Code, § 30519(b).) It also has permit jurisdiction over developments on specified port lands or on state university property within the coastal zone. (*Ibid.*)

violations of the Coastal Act. (*Id.*, §§ 30809, 30810.) Under specific circumstances, the Commission also has authority to issue orders to restore a site that has been disturbed. (*Id.*, § 30811.) Violations of the Coastal Act are subject to injunctive relief, substantial civil fines and penalties, as well as exemplary damages. (*Id.*, §§ 30803, 30805, 30820, 30821.6, 30822.) Monies recovered by the Coastal Commission are deposited into the Violation Remediation Account of the Coastal Conservancy Fund until appropriated by the Legislature. (*Id.*, § 30823.)

Membership: The Coastal Commission consists of 15 members, 12 voting and 3 non-voting. (Pub. Resources Code, § 30301.) Six of the voting members are members of the public at large, while another six of the voting members are locally elected officials from each of six coastal regions. (*Id.*, § 30301, subds. (d), (e).) The voting members are appointed by the Governor, the Senate Rules Committee and the Speaker of the Assembly. The remaining three non-voting members include the Secretary for Resources, the Secretary of Business, Transportation, and Housing, and the chairperson of the State Lands Commission. (*Id.*, §§ 30301, subds. (a) - (c), 30301.5.)

E. General Observations About the Regional Land Use Agencies

Each of the foregoing entities is unique in its structure and approach to regional land use issues. At the same time, there are general similarities and differences in these agencies' legislation, authorities, and plans. This brief set of observations may be useful in considering how the state might play a new or different role in Delta land use decisions. Attachment A to this letter provides summary information regarding each of these agencies.

Direct permitting authority versus review authority over local governments: Both BCDC and TRPA have direct permitting authority over projects within their jurisdictions. Proposed development projects cannot take place absent permits obtained from these agencies. (BCDC also has review authority in the Suisun Marsh.) In contrast, the Delta Protection Commission has no direct permit authority, but instead has review authority over the land use decisions of local governments in the primary zone, and the right to comment on land use decisions by local governments in the secondary zone. The Coastal Commission's authority combines aspects of both direct permitting and review. The Coastal Commission directly considers applications for coastal development permits in areas where there is no certified local coastal program. Where a certified local program exists, local governments have primary authority over issuing coastal development permits; however, the Coastal Commission retains appellate authority over specified kinds of projects or projects in certain locations.

Specific versus general enabling legislation: The enabling legislation for each of the regional land use agencies differs in level of specificity. BCDC and the Coastal Commission

have enabling legislation that is very specific in dictating the parameters against which these agencies evaluate permit applications. (Gov. Code, §§ 66605, subd. (b) [projects proposing fill in Bay should be authorized "only when no alternative upland location is available for such purpose"], 66632.4 [projects within shoreline band must provide for "maximum feasible public access, consistent with the proposed project, to the bay and its shoreline"]; Pub. Resources Code, §§ 30210 [maximum public access and recreational opportunities shall be provided, consistent with public safety and private property rights], 30220 ["Coastal areas suited for water-oriented recreation activities" that cannot be provided inland "*shall* be protected for such uses"], 30233 [diking, filling, or dredging in open coastal waters, wetlands, estuaries, or lakes permissible only where no feasible less environmentally damaging alternative exists].)

TRPA's enabling legislation is more general. The bi-state Compact did not identify the specific parameters against which TRPA would evaluate permit applications for new land use projects. Instead, the Compact described the values that the states of California and Nevada sought to protect and directed TRPA to first develop environmental threshold carrying capacities, and then to develop a regional plan to achieve those thresholds. (Compact, Art. I, subd. (b), Art. V, subd. (b).) The subsequently adopted thresholds themselves are standards against which development permit applications are judged, and in that sense they are somewhat similar to the detail in the enabling legislation for BCDC and the Coastal Commission. (TRPA Resolution 82-11, Aug. 1982.)

The Delta Protection Commission enabling legislation has both general and specific attributes. It generally describes the values in the Delta that the Legislature seeks to promote and protect generally, and directs the Delta Protection Commission to prepare the plan that will do so. (Pub. Resources Code, § 29760.) At the same time, the legislation includes a laundry list of findings that the Delta Protection Commission must make in considering local government general plan amendments. (*Id.*, § 29763.5.) These are specific in that they require the Commission to find that local government general plan amendments conforming to the Commission plan will not result in wetland or riparian loss, degrade water quality or increase non-point source pollution, degrade or reduce the Pacific Flyway, reduce public access, increase flood hazard risks to the public, adversely impact agricultural lands, impair levee integrity, adversely impact navigation, or increase restrictions on agricultural practices. (*Ibid.*)

Compliance required by state agencies versus no state agency compliance: There are differences in the applicability of the regional land use plans to other state agencies. State agencies undertaking projects in the Tahoe Basin, for example, must comply with the Tahoe Regional Planning Agency's Regional Plan. (Compact, Art. VI, subd. (b).) State agency compliance is similarly required with the California Coastal Act and the Bay Plan. (Pub. Resources Code, §§ 21066 and 30600; Gov. Code, § 66632.) In contrast, the Delta Protection

Act does not apply to state agencies undertaking projects in the Delta. (Pub. Resources Code, § 29716.)

Governing boards with local majority versus state majority: The composition and size of the governing boards of the regional land use agencies varies. BCDC and the Delta Protection Commission have large boards with a majority of local representatives. BCDC's board has 27 members, 20 of which represent local interests. The Delta Protection Commission's board has 23 members, 13 of which represent local interests. TRPA and the Coastal Commission each have 15 member boards, although only 14 of TRPA's members vote and 12 of the Commission's members vote. TRPA's board has three California local representatives and three Nevada local representatives. Of the Coastal Commission's 12 voting members, 6 represent local interests.

Smaller versus larger geographic scope: Finally, while the geographic scope of the regional land use agencies necessarily varies, the definition of geographic scope is an important factor in a regional land use agency being able to accomplish its mission. For BCDC, the Coastal Commission, and TRPA, their enabling acts provide jurisdiction over a specific resource to be protected (the coastline, the Bay, Lake Tahoe), and also a broader area (coastal uplands, the 100-foot band around the Bay, the entire Lake Tahoe Basin watershed). The inclusion of a broader area allows such areas to be protected for their own sake, and also provides the regional land use agency the ability to address actions in the broader areas that can indirectly affect the narrower area. The result is a group of regional land use agencies with very large jurisdictions, but arguably a greater ability to protect the resources of concern.

The Delta Protection Commission's jurisdiction over the Delta's primary zone is about 500,000 acres of land, the smallest geographic area of the regional land use agencies. The Delta Protection Act precludes the Commission from having any authority in the secondary zone, which could be characterized as an area where projects indirectly affect the primary zone, except to comment on local government projects. In this sense, the Delta Protection Commission has an arguably narrower scope of authority to carry out its mission than BCDC, the Coastal Commission, or TRPA.

II. Options for Creating a Productive Relationship between the State and Federal Governments and Coordination among State and Federal Agencies

Another theme about Delta governance is the critical role of the federal government in the this region. It has been widely and repeatedly recognized that any solution regarding the Bay-Delta system must be a product of a cooperative relationship between state and federal agencies.

This is due to the deep intermingling of literally dozens of federal and state agencies working on issues in and related to the Delta, from water project operations to levee maintenance to endangered species regulations. (See Generally, Department of Water Resources, Sacramento San Joaquin Delta Atlas, rev. 1995.) Coordination with the federal government will necessarily be an important aspect of any new governance structure to implement the Delta Vision. That may take many forms. The following discussion explores some of the options ranging from formal to informal, temporary to permanent.

A. The Coastal Zone Management Act Example: A Federal Statute Authorizing State Agency Review of Federal Activities for their Consistency with State Policies

Spurred in part by the disastrous oil spill that occurred off the Santa Barbara coast in 1969, the federal Coastal Zone Management Act (16 U.S.C. § 1451 et seq.) provides an exemplar of federal and state coordination. Under the CZMA, states are authorized to review certain activities of federal agencies, including activities directly conducted by federal agencies and activities permitted or licensed by these agencies, for consistency with a state's federally approved coastal management program. (*Id.*, § 1456.) This review authority applies to any activity that affects any land or water use or natural resource of the state coastal zone. (*Id.*, § 1456 (c).) A wide range of activities meet this standard, and it covers projects that will have direct effects on the coastal zone, as well as activities with indirect (cumulative or secondary) effects that are later in time or farther removed in distance but are still reasonably foreseeable. (15 C.F.R. § 930.11(g).) Any activity with this effect conducted by a federal agency must be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of the state management program. (*Id.*, § 1456(c)(1)(A).) Federal permit or license activities must be consistent with the management program and generally cannot proceed if the state objects. (*Id.*, § 1456(c)(3)(A).)

California's coastal management program was approved in 1979. (*American Petroleum Institute v. Knecht* (C.D. Cal. 1978) 456 F.Supp. 889, *aff'd* *American Petroleum Institute v. Knecht* (9th Cir. 1979) 609 F.2d 1306.) This program, which incorporates policies from several state programs, including the California Coastal Act, is administered by the California Coastal Commission for the state coastal zone and by BCDC for the San Francisco Bay Area. (See Pub. Resources Code, §§ 30008 and 30330.)

The intent of the CZMA was "to enhance state authority by encouraging and assisting the states to assume planning and regulatory powers over their coastal zones. (U.S. Code Congressional and Administrative News, 92nd Congress, Second Session, 1972 Volume 3, p. 4776.) Indeed, the consistency provisions of the CZMA often provide the only review authority

the state has over federal activities affecting coastal resources. (See Coastal Commission website, www.coastal.ca.gov/whoweare.html.) Historically, the federal government has not demonstrated a willingness to enter into similar collaborative relationships for other regions of the state, including the Delta.

B. The CALFED Example: A Federal Statute Requiring Federal Agency Compliance With a Jointly Developed State/Federal Plan

The CALFED example is another manner of establishing a state/federal governance relationship by statute. The CALFED Implementation Plan envisioned that the long-term approach to governance would be a permanent joint federal/state commission:

The state and federal administrations strongly believe that a new joint federal/state commission must be created, through state and federal legislation, to oversee the long-term implementation of the CALFED Preferred Alternative. (CALFED Implementation Plan, p. 4-1, and § 4.5.2, pp. 4-15 to 4-19, attached to CALFED Bay-Delta Program Final Programmatic Environmental Impact Statement/Environmental Impact Report.)

More specifically, the CALFED agencies proposed a 12-member commission made up of 4 federal members, 4 state members, and 4 public/tribal members representing agricultural water users, urban water users, environmentalists, and Indian tribes. (*Id.*, at pp. 4-17.)

Federal legislation to authorize a formal commission to implement the CALFED Program did not materialize. Ultimately, in 2002, the State Legislature adopted the California Bay-Delta Authority Act, creating a state agency with both state and federal members, with the provision that federal members would vote once Congress authorized them to do so. (Wat. Code, § 79412, subds. (a), (i).) The Act states that “[f]ederal participation in the authority is intended to promote coordination and provide advice from federal agencies and thereby assist the state and federal agencies to more effectively meet their common goals. (*Id.*, § 79413.)

Congress never authorized the federal representatives on the California Bay-Delta Authority to vote. Still, Congress did authorize federal agency participation in the Authority as non-voting members. (CALFED Bay-Delta Authorization Act, Pub.L. No. 108-361, 118 Stat. 1681, § 104, subd. (d), p. 17.) As discussed below in section II.E, even non-voting federal participation on a state agency can promote intergovernmental coordination. Here, the authorizing legislation specifically charges the federal agencies with coordinating their actions with the State agencies, and with carrying out activities following consultation and coordination with the Governor confirming that the activities conform to the CALFED Record of Decision.

(*Id.*, §§ 103, subd. (b), 104, subd. (a), pp. 3 and 17.) In some sense, this legislation requiring federal conformance to the jointly-developed CALFED plan is similar to the Coastal Zone Management arrangement, but weaker in that the state has no review authority over federal actions.

The California Bay-Delta Authority is not the formal state/federal commission originally envisioned by the CALFED agencies, with state and federal participation on an equal basis. While the formal state/federal commission approach may be worthy of continued discussion, in this office's experience working with the CALFED Bay-Delta Program during governance discussions, a number of legal issues may make such a structure difficult to create. These issues range from concerns about preserving the supremacy of federal law, to questions about conflicting loyalties to respective state or federal agencies, and the application of federal laws related to advisory committees.

C. The San Luis Example: A Joint Venture Relationship

California has used a joint venture mechanism to cooperate with the United States in the area of water development. In the mid 1950s, the State and the federal government faced a novel problem. Both governments were independently exploring different options for expanding their water projects in the Central Valley. (*California v. United States*, 271 F.3d 1377, 1379 (Fed. Cir. 2001).) And both ultimately concluded that only one, and the same, location was feasible for their respective reservoir projects. (*Ibid.*; see also U.S. Code Congressional and Administrative News, 86th Congress, Second Session, 1960 Volume 2, p. 2212.)

The resolution of this conundrum came in 1960 in the form of the San Luis Act, which authorized the Secretary of the Interior to enter into an agreement with California for the coordinated operations of the San Luis unit, including joint use of a reservoir and related facilities. (Pub.L. No. 86-488, 74 Stat. 156 (1960) [San Luis Act], § 2.)⁴ The Act provided that the state/federal agreement be submitted to Congress, and no funds would be appropriated by Congress for the Department of Interior to commence construction until 90 days had passed without the agreement being disapproved by the House or Senate Interior and Insular Affairs Committee. (*Ibid.*) The review provision allowed for Congress to be informed of the resolution of certain outstanding issues regarding drainage, as well as the cost savings to the federal government by allowing joint use of facilities by the State of California. (U.S. Code

4. Narrative information at the U.S. Bureau of Reclamation website indicates that California lobbied a reluctant federal government for the joint undertaking. (See www.usbr.gov/dataweb/html/casanluis.html.)

Congressional and Administrative News, 86th Congress, Second Session, 1960 Volume 2, pp. 2224-2225.)

The state and federal governments entered into the San Luis Agreement in December 1961. The agreement provided for the United States to construct the joint-use San Luis facilities and then turn them over to the State of California for operations and maintenance. (*California v. United States, supra*, 271 F.3d at p. 1379.) Costs for operations and maintenance were apportioned between the two governments with California providing 55% of costs and the United States providing 45%. (*Ibid.*) To accommodate the needs of both parties, the U.S. Bureau of Reclamation increased the size of the reservoir design to twice the size originally contemplated. (See www.usbr.gov/dataweb/html/casanluis.html.)

After approval of the San Luis Agreement, Congress appropriated more than \$ 27 million for the San Luis facilities, of which \$ 14 million was advanced by the State. (*Metropolitan Water Dist. of Southern California v. Marquardt* (1963) 59 Cal.2d 159, 192.) The Department of Water Resources and the U.S. Bureau of Reclamation have been jointly utilizing the San Luis reservoir and related facilities since construction was completed in 1967. (*California v. United States, supra*, 271 F.3d at p. 1379.) While the San Luis example does not involve governance of a multi-pronged resource management program, it does provide an example of how a major public works project can be constructed and operated in a cooperative manner through a joint venture of the two governments.

D. CALFED Planning and Interim Implementation Examples: Governance by Agreement

The CALFED Program provides two examples of state/federal governing relationships established by agreement, each with different purposes, but with similar emphasis on government coordination.

In June 1994, following several years of antagonistic relationships regarding actions in and related to the Delta, the State of California and the United States entered into the Framework Agreement between the Governor's Water Policy Council of the State of California and the Federal Ecosystem Directorate [hereafter Framework Agreement]. This agreement was intended to, "establish a comprehensive program for coordination and communication" between the state and federal agencies regarding environmental protection and water supply reliability related to the Delta and its watershed. (Framework Agreement, p. 1.) It particularly emphasized "increased coordination and communication with respect to:

- substantive and procedural aspects of water quality standard setting;

- improved coordination of water supply operations with endangered species protection and water quality standard compliance; and
- development of a long-term solution to fish and wildlife, water supply reliability, flood control, and water quality problems in the Bay-Delta Estuary.” (*Ibid.*)

In the agreement, the agencies “commit to promoting maximum coordination, communication, and cooperation among the State and Federal agencies with interests and responsibilities in the Bay-Delta Estuary within the limits of existing law.” (*Id.* at p. 4.)

A critical aspect of this agreement was the process it detailed that the state and federal governments would use for setting Delta water quality standards following protracted difficulties in accomplishing this task. (*Id.*, Exhibit A; see generally *State Water Resources Control Board Cases* (2006) 136 Cal.App.4th 674, 699-700.) The Framework Agreement also established what has become known as the CALFED Ops Group to create a high level of coordination among resource managers, water operators, and biologists. (*Id.*, Framework Agreement, Exhibit B.) The Ops Group has continued since its inception, fostering improved coordination over:

- (1) the adjustment of export limits to minimize endangered species take or to improve fishery conditions in general;
- (2) operation of the Delta Cross-channel; and
- (3) changes in the point of diversion to improve fishery conditions or make up losses to water supply caused by previous operational changes to improve fishery conditions. (See <http://www.woco.water.ca.gov/calfedops/desc.html>.)

The Framework Agreement also committed the agencies to jointly develop a long-term solution to problems in the Delta, the six-year planning process that ultimately resulted in the CALFED Program described in the Record of Decision. (Framework Agreement, Exhibit C; CALFED Bay-Delta Program, Programmatic Record of Decision, vol. 1, pp. 1-3, 7.)

In August 2000, upon completing the CALFED Program described in the Record of Decision, the CALFED agencies used an Implementation Memorandum of Understanding to describe their relationship and expectations for implementing the CALFED Program for an interim period, prior to establishment of a permanent governance entity. (See CALFED Programmatic Record of Decision, Att. 3, Implementation Memorandum of Understanding.) The implementation structure consisted of the Policy Group reporting to the Governor and Secretary of the Interior, public advisory groups, the CALFED Bay-Delta Program Executive Director and staff, and state and federal agencies and teams. (*Id.* at pp. 6-9.) Every agency signing the Memorandum of Understanding was a member agency of the Policy Group, and identified a representative and alternate for participation in Policy Group meetings. (*Id.* at p. 7.)

In the Implementation Memorandum of Understanding, the agencies acknowledged that the Policy Group, “has no authority to make decisions that would require an agency to exceed its statutory authority or restrict an agency’s statutory discretion.” (*Ibid.*) Decisions would be made following a “Policy Group Decision Rule” that required state and federal consensus. “The consensus rule requires that the State and Federal co-chairs reach agreement before an action can be taken by the Policy Group. The State and Federal co-chairs will discuss the State and Federal positions both within their respective caucuses and with each other before the Policy Group takes any action.” (*Ibid.*) Thus, neither the state nor federal government could have a decision forced on it against its will.

The Implementation Memorandum of Understanding created a voluntary association among the state and federal CALFED agencies that was deliberately intended to be temporary. (*Id.* at p. 14.) The agencies had determined that this type of voluntary association among agencies by agreement would be inadequate as a long-term governing structure for implementing the CALFED Program. (See Final Implementation Plan, pp. 4-12 to 4-13, attached to Final CALFED Bay-Delta Program Programmatic Environmental Impact Statement/Environmental Impact Report (July 2000).) The agencies were concerned that this informal structure involved: (1) dispersed authority, (2) lack of accountability and (3) lack of durability. (*Ibid.*)

Interestingly, following its review of the CALFED Bay-Delta Program, the Little Hoover Commission recommended that the Secretary of Resources should be responsible for the CALFED Program (at least on the state side), and that new legislation should restore the Policy Group. (Little Hoover Commission Report, Executive Summary, p. v; see also chart of proposed CALFED organization structure on p. xi.) It envisioned the Policy Group as a senior management team comprised of the primary state and federal departments, chaired by the Secretary for Resources and the U.S. Secretary of Interior or a designee. (*Id.*, Executive Summary, pp. iv and vi; see generally, *id.* at pp. 19-30.) The CALFED interim governance structure may have ongoing usefulness in the discussion of Delta Vision governance.

E. Federal Membership on Multi-member Agency Board

Another method to coordinate with the federal government involves providing federal agency representation on a state agency’s multi-member governing board. Several existing state agencies have federal agency representatives with authority to vote. Several others, including the California Bay-Delta Authority, have federal agency representatives that do not have the ability to vote.

Of the four regional land use agencies, only BCDC has federal members that can vote. Of BCDC’s 27-member board, two positions are representatives of federal agencies, the U.S.

John Kirlin, Executive Director

October 15, 2007

Page 21

Environmental Protection Agency and the U.S. Army Corps of Engineers. (Gov. Code, § 66620, subds. (a), (b).) These federal members can vote on general matters, such as policies or amendments to the Bay Plan, but cannot vote on consistency determinations under the Coastal Zone Management Act or on permit decisions. (*Id.*, § 66632, subd. (f).) The Tahoe Regional Planning Agency board of 15 members has one federal appointee that serves as a non-voting member. (Compact, Art. X, § 3.) Neither the Coastal Commission nor the Delta Protection Commission have federal representatives on their boards. (Pub. Resources Code, §§ 29735, 30301.)

Of the state land conservancies (see *infra* § III), the Coachella Valley Mountains Conservancy includes two federal agency representatives that can vote, the Regional Forester for the U.S. Forest Service, Pacific Southwest Region, and the Regional Director of National Park Service, Pacific West Region. (Pub. Resources Code, § 33503.) The Santa Monica Mountains Conservancy has one federal agency representative that can vote, the Superintendent of the Santa Monica Mountains National Recreation Area, and one federal agency representative that serves as a non-voting ex officio member, the Supervisor of the Angeles National Forest. (*Id.*, § 33200.)

The California Tahoe Conservancy has one ex officio, non-voting federal member, a representative of the U.S. Secretary of Agriculture. (Gov. Code, § 66906.1.) The San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy has two ex officio, non-voting members, the District Engineer of the U.S. Army Corps of Engineers and the Regional Forester for the U.S. Forest Service, Pacific Southwest Region. (Pub. Resources Code, § 32605, subd. (b).) The Sierra Nevada Conservancy has three federal members who are “nonvoting liaison advisers” including a representative of the National Park Service, a representative of the U.S. Forest Service, and a representative of the U.S. Bureau of Land Management. (*Id.*, § 33321, subd. (a)(II).)

The California Bay-Delta Authority is another example of a state agency with non-voting federal representatives on its multi-member governing body. In the two years following adoption of the CALFED Record of Decision, no legislative enactment, state or federal, created the new governance entity envisioned in the 2000 Implementation Memorandum of Understanding. Then, in 2002, the California Legislature enacted the California Bay-Delta Authority Act, establishing the California Bay-Delta Authority as the governance entity for overseeing and coordinating implementation of the CALFED Program. (Wat. Code, § 79400 et seq.) The governing board of the Authority includes representatives from six state agencies and six federal agencies “if those federal agencies are authorized to participate [by Congress]”, seven public members, one member of the Bay-Delta Public Advisory Committee, and four nonvoting ex officio members from the California Legislature. (Wat. Code, § 79412, subd. (a).) The Act

specifically addresses the role of the federal members: “The federal representatives . . . may participate as nonvoting members until federal authorizing legislation is enacted and upon the enactment of that legislation, shall become voting members.” (*Id.*, § 79412, subd. (i).)

Congress has not authorized the federal agencies to participate as voting members of the Authority. Thus, CBDA is a state agency with non-voting federal members. While they cannot vote, federal representatives participate in discussions at Authority meetings and present the views of their agencies on the matters before the Authority. The Authority thus provides a mechanism for some level of coordination and communication between the state and federal agencies involved in the Delta.

F. Informal Coordination Among Staff

Finally, regardless of the form of a governing entity, there is great benefit to fostering continued coordination among the state and federal agency staff through the various types of multi-agency groups that grew out of the CALFED Program. A few examples have included the Water Operations Management Team, the Environmental Water Account Team, the Agency Coordination Team, the Policy Group, the Management Group, the Data Assessment Team, and the Tracy Fish Test Facility Team. These forums, particularly the Policy Group and Management Group, provided important forums for frank discussion among agencies about issues of concern in the CALFED planning and implementation process. This office has observed that an important and lasting strength of the CALFED Program has been the enhanced communication taking place between state and federal agencies at the staff level.

III. Non-Regulatory Options for Achieving the State’s Planning and Policy Objectives in the Delta

Even where the Legislature has established an agency with regional regulatory authority over land use, it has still deemed it necessary to establish conservancies as well. As discussed above in section I, California’s regional land use agencies play a significant role in evaluating and permitting proposed land uses and in enforcing the state policies reflected in their respective organic statutes and regional plans. Generally, however, these regulatory agencies do not play a prominent role in implementing projects that carry out the resource management and preservation goals in these statutes and plans. Instead, conservancies, that is agencies that actively carry out resource protection and other public interest objectives, have been established to complement the regional land use authority’s regulatory role.

In the Lake Tahoe region, for example, the California Tahoe Conservancy implements resource protection projects consistent with the Tahoe Regional Planning Agency’s Regional

Plan, particularly TRPA's Environmental Improvement Program. (Gov. Code, §§ 66901, subd. (a), 66906; Environmental Improvement Program, Progress Report 1997-2007, pp. 36-38, 64.) In the San Francisco Bay, the Suisun Marsh, and along the coast, the State Coastal Conservancy implements resource protection projects consistent with the San Francisco Bay Plan, the Suisun Marsh Protection Plan, and the California Coastal Act. (Pub. Resources Code, §§ 31100, 31152, 31162, 31163, 31165, 31201, 31213.) These two conservancies complement the regulatory process by providing a state-funded purchaser for regulated lands of special significance, and by offering an alternative to accomplish statewide objectives. (See Legislative Analyst's Office (LAO), California's Land Conservation Efforts: The Role of State Conservancies (2001), pp. 15-16 [hereafter LAO 2001].)

Further, in some areas of the state the Legislature has determined that statewide interests are implicated or regional planning should be encouraged to restore, preserve or enhance environmental or recreational resources even where it has not been feasible or desirable to create new state regulatory authorities. In these situations, state land conservancies have been created to accomplish statewide goals through the purchase of select properties or the issuance of grants to fund public projects. As an example, the San Joaquin River Conservancy was established to acquire and manage public lands within the San Joaquin River Parkway for low-impact recreation, education, and wildlife protection. (Pub. Resources Code, §§ 33001, 33002, 33204, 33204.3.) And concerns about preserving the mountainous lands around the Coachella Valley led to the creation of the Coachella Valley Mountains Conservancy, an agency directed to acquire and hold open space to protect and enhance wildlife, recreational, and educational values in this area. (*Id.*, § 32633.) The following general discussion summarizes basic information about the conservancies, the limited role of eminent domain authority and how the conservancies integrate local government perspectives. The discussion also briefly contrasts how ecosystem restoration has occurred in the Delta in the absence of a dedicated Delta conservancy.

A. The General Mission of the Conservancies

The Legislature has established nine state land conservancies, including the:

- Baldwin Hills Conservancy (Pub. Resources Code, § 32550 et seq.);
- State Coastal Conservancy (*Id.*, § 31000 et seq.)
- California Tahoe Conservancy (Gov. Code, §§ 66901, subd. (a), 66906);
- Coachella Valley Mountains Conservancy (Pub. Resources Code, § 33500 et seq.);
- San Diego River Conservancy (*Id.*, § 32630 et seq.);
- San Gabriel & Lower Los Angeles Rivers and Mountains Conservancy (*Id.*, § 32600 et seq.);

- San Joaquin River Conservancy (*Id.*, § 32510 et seq.);
- Santa Monica Mountains Conservancy (*Id.*, § 33200 et seq.); and
- Sierra Nevada Conservancy (*Id.*, § 33300 et seq.).

Each of the conservancies has a mission unique to its defined geographic area of jurisdiction. Attachment B to this letter provides a chart showing the year each conservancy was established, its general geographic jurisdiction, and whether the conservancy legislation includes a sunset clause. In general, the conservancies are charged with protecting, enhancing or restoring ecosystems, preserving agricultural land, improving public access to the ocean shoreline, San Francisco Bay, specific rivers, and Lake Tahoe, and improving public recreation opportunities. (See generally, LAO 2001, at pp. 4-6.)^{5/} In many cases, the conservancies are charged with multifaceted objectives that have at least some potential to conflict. (*Id.*, at pp. 17-18.)^{6/}

Each of the conservancies carries out its mission based on an adopted plan. Some of these plans preceded the establishment of the conservancy, while others are a product the

5. See, e.g., Pub. Resources Code, § 32551 [Baldwin Hills Conservancy mission to develop and coordinate integrated program of resource stewardship to optimize recreational and natural resource values based on needs and desires of surrounding community]; *id.*, § 31054 [State Coastal Conservancy mission to implement agricultural protection, area restoration and resource enhancement within coastal zone] *id.*, § 33501 [San Diego River Conservancy mission to acquire and manage public lands for recreation, open space, wildlife and habitat protection and restoration, wetland protection and restoration, education, flood water conveyance]; *id.*, § 32602 [San Gabriel & Lower Los Angeles Rivers and Mountains Conservancy mission to acquire and manage public lands for open space, low-impact recreation, education, water conservation, watershed improvement, and wildlife and habitat restoration and protection]; *id.*, § 32510 [Santa Monica Mountains Conservancy mission to preserve and protect Santa Monica Mountains Zone, including resource protection, recreational access, open space]; *id.*, § 33301 [Sierra Nevada Conservancy mission to provide increased opportunities for tourism and recreation, protect, conserve, and restore region's physical, cultural archaeological, and living resources, preserve working landscapes, reduce risk of natural disasters, etc.]; Gov. Code, § 66907 [Tahoe Conservancy mission includes protecting natural environment, providing public access, recreation, and preserving wildlife habitat].

6. Conservancies are not the only land acquisition agencies working in the state to address recreational, open space, public access, and habitat goals. The Department of Parks and Recreation and the Wildlife Conservation Board are actively involved in land acquisition statewide and the Department of Water Resources owns considerable acreage in the Delta. (See LAO 2001, p. 9.)

enabling statute directs the conservancy to develop and adopt.^{7/} These differences reflect the different origins of the conservancies, with several conservancies being established following lengthy, locally-driven planning efforts. (See, e.g., Pub. Resources Code, § 33704 [Coachella Valley Mountains Conservancy]; *id.*, § 32630 [San Diego River Conservancy]; *id.*, § 33345 [directing Sierra Nevada Conservancy to prepare strategic program].)

The conservancies play a strictly non-regulatory role as they carry out their missions. The Coastal Conservancy describes itself as “a unique entity with flexible powers to serve as an intermediary among government, citizens, and the private sector in recognition that creative approaches would be needed” to preserve the coast and the San Francisco Bay. (www.coastalconservancy.ca.gov/About/about.htm.) Several conservancies describe their roles as involving partnerships with federal, state, and local interests. (See, e.g., <http://sdrc.ca.gov> [San Diego River Conservancy]; <http://smmc.ca.gov/partners.html> [Santa Monica Mountains Conservancy]; <http://www.cvmc.ca.gov> [Coachella Valley Mountains Conservancy].) The Legislative Analyst noted that the conservancies have flexibility in how they collaborate with others and labeled this attribute a strength. (LAO 2001, p. 10.)

B. Land Acquisition and the Limited Role of Eminent Domain

Land acquisition and management are prominent roles for the conservancies in carrying out their missions and the Legislature has been specific in what powers the conservancies may

7. See, e.g., Pub. Resources Code, § 32565.5(f) [actions of the Baldwin Hills Conservancy guided by the master plan for the Kenneth Hahn State Recreation Area prepared by Department of Parks and Recreation and approved by Conservancy]; *id.*, § 33702(d) [reference to Coachella Valley natural community conservation plan]; *id.*, § 32653 [San Diego Conservancy to adopt integrated program of resource stewardship and management]; San Diego River Conservancy, Five Year Strategic and Infrastructure Plan, available at <http://sdrc.ca.gov>; Pub. Resources Code, § 32604, subd. (d) [San Gabriel & Lower Los Angeles Rivers and Mountains Conservancy to adopt plan]; Common Ground, from the Mountains to the Sea available at www.rmc.ca.gov; Pub. Resources Code, § 32528 [San Joaquin River Conservancy may implement San Joaquin River Parkway Task Force Plan]; Recomplied San Joaquin River Parkway Master Plan (July 20, 2000) available at www.riverparkway.org/pdf/SJRCMASTERPLAN.pdf; Pub. Resources Code, § 33002 [recognizing role of plan adopted by Santa Monica Mountains Comprehensive Planning Commission]; Santa Monica Mountains Comprehensive Plan (Feb. 1979) available at www.smmc.ca.gov; Pub. Resources Code, § 33345 [Sierra Nevada Conservancy to develop plan]; Sierra Nevada Conservancy Strategic Plan available at www.sierranevadaconservancy.ca.gov/docs/SP_Final_as_approved_7-20_7-28.pdf.

use to acquire land. Most of the conservancies have authority to acquire and hold real property, consistent with the Property Acquisition Law, or to award grant funding to other agencies and private entities to do so.^{8/} The Legislature has prohibited the Sierra Nevada Conservancy from acquiring real property in fee by purchase, although it may hold lesser interests in real property. (Pub. Resources Code, § 33347.) In his signing message for AB2600, establishing the Sierra Nevada Conservancy, Governor Schwarzenegger emphasized his desire to see conservation easements rather than fee simple land acquisitions play a significant role in the Conservancy's program. He hoped this would allow the Conservancy to accomplish its mission while leaving lands on local tax rolls and minimizing state land management responsibilities and costs. (See text of signing message following Pub. Resources Code, § 33300.)

The Legislature has expressly prohibited some conservancies from exercising the power of eminent domain either directly or through the State Public Works Board. (Pub. Resources Code, § 32567 [Baldwin Hills Conservancy]; § 32612 [Rivers and Mountains Conservancy]; *id.*, § 32525 [San Joaquin River Conservancy]; *id.*, § 33347 [Sierra Nevada Conservancy].) Other conservancies cannot exercise eminent domain directly, but have authority to ask the Public Works Board to do so to obtain real property. (*Id.*, § 31106 [State Coastal Conservancy]; *id.*, § 33203 [Santa Monica Mountains Conservancy]; *id.*, § 33701 [Coachella Valley Mountains Conservancy]; Gov. Code, § 66907.5 [California Tahoe Conservancy]; *id.*, § 32645 [San Diego River Conservancy].) In the case of the Coachella Valley Mountains Conservancy, the Public Works Board may exercise eminent domain on behalf of the conservancy, but cannot do so over the objection of the governing city, county or tribal jurisdiction in which the land is located. (Pub. Resources Code, § 33701, subd. (b).)

Our recent experience is that even the four conservancies with the ability to have eminent domain authority used on their behalf do not exercise this power. Instead the focus of the conservancies has been on proceeding with land acquisitions only in those situations involving a willing seller. This emphasis is due, in part, to the fact that bond act funding that has supported conservancy land acquisition activities in recent years has limited the use of bond funds to willing seller transactions. (See, e.g., Wat. Code, § 79573, subd. (a) [Proposition 50].) The emphasis on working with willing sellers is also consistent with the general approach of the

8. See, e.g., Pub. Resources Code, §§ 31105, 31116 [Coastal Conservancy]; *id.*, §§ 32567, 32569 [Baldwin Hills Conservancy]; §§ 33601, subd. (e); *id.*, §§ 33702, subd. (e), 33702.5, [Coachella Valley Mountains Conservancy]; *id.*, §§ 32645, 32649 [San Diego River Conservancy]; *id.*, §§ 32612, 32614.5 [Rivers and Mountains Conservancy]; *id.*, §§ 32510, 32537 [San Joaquin River Conservancy]; *id.*, §§ 33203, 33204 [Santa Monica Mountains Conservancy]; *id.*, §§ 33343, 33347 [Sierra Nevada Conservancy]; Gov. Code, §§ 66907, 66907.7 [Tahoe Conservancy].

conservancies to develop cooperative relationships with local entities and individuals to achieve their stated goals.

Notably, the lack of use of eminent domain by the conservancies does not appear to have hampered them in carrying out their missions. In a report cataloguing the accomplishments of the seven conservancies in existence as of 2001, the Legislative Analyst identified thousands of properties that had been acquired in fee or where use had been restricted by the purchase of conservation easements. (LAO 2001, p. 11; see also San Joaquin River Conservancy Projects and Bond Fund Allocations, available at www.sjrc.ca.gov [describing projects through 2007]; Legislative Analyst's Office, Meeting Objectives; More Work to be Done: Baldwin Hills Conservancy (2007), at pp. 3-4 [Baldwin Hills Conservancy has facilitated or funded public acquisition of 155 acres].)

C. Integration of Local Government Perspectives

The Legislature has integrated local government perspectives and the interests of the local community in the missions of the conservancies through the membership on their governing boards. For example, several of the state land conservancies are governed by boards with a majority of local representation, providing a strong local voice in decision making.^{9/} Other conservancies have local representation on their governing boards, but to a lesser degree.^{10/}

The Legislative Analyst has observed that the membership of local interests in the conservancy governing boards "can help to engender the trust and cooperation of local entities." (LAO 2001, p. 10; see also Chelsea R. Olson, Saving the Sierras: Is a Conservancy the Answer, 36 McGeorge L. Rev. 895, 902 (2005) [noting argument that Sierra Nevada Conservancy would

9. See, e.g., Pub. Resources Code, § 32605 [ten of thirteen voting San Gabriel & Lower Los Angeles Rivers and Mountains Conservancy members represent local governments and interests]; *id.*, § 32515 [nine of fifteen voting San Joaquin River Conservancy members represent local governments and interests]; *id.*, § 33200 [six of eight voting members of Santa Monica Mountains Conservancy represent local governments and interests].

10. Gov. Code, § 66906.1 [three of seven voting Tahoe Conservancy board members appointed by local governments]; Pub. Resources Code, § 32634 [two of nine voting San Diego River Conservancy Board members represent local governments]; *id.*, § 33321 [six of thirteen voting members of Sierra Nevada Conservancy represent local governments and interests]; *id.*, § 31100 [one of six voting members of California Coastal Conservancy may be, but is not required to be, local elected official]; *id.*, § 33503 [eleven of twenty-one voting members of Coachella Valley Mountains Conservancy represent local governments or local interests].

bring voice to local residents over state funds invested in region].) Consistent with this observation, our experience has been that regardless of statutory mandate or board composition, conservancies generally try to collaborate with local governments and community groups on projects. Additionally, they will seek the input of the public and local jurisdictions regarding potential projects, both in the planning stage and during review under the California Environmental Quality Act.

The Legislature has also integrated the local government and community perspectives into conservancy programs by expressly requiring certain of the conservancies to coordinate their efforts with local agencies, private entities, and others. (See, e.g., Pub. Resources Code, § 32514 [San Joaquin River Conservancy]; *id.*, § 33341 [Sierra Nevada Conservancy]; *id.*, § 33704 [Coachella Valley Mountains Conservancy to coordinate with Coachella Valley Mountains Trust]; *id.*, §§ 33204.3, 33204.5 [Santa Monica Mountains Conservancy].) For the San Gabriel & Lower Los Angeles Rivers and Mountains Conservancy, the Legislature has gone one step further and the Conservancy is required to obtain approval of its open space plan by a majority of the cities representing a majority of the population in the conservancy's jurisdiction. (Pub. Resources Code, § 32604, subd. (d).) Further, Rivers and Mountains Conservancy projects must comply with "all laws, regulations, and general and specific plans" of the city in which the project is proposed. (*Id.*, § 32613, subd. (b).)

D. Restoration Programs in the Delta

Although the Delta Protection Act and the Delta Protection Commission's Land Use and Resource Management Plan for the Primary Zone of the Delta identify the State's objectives for the Delta, no single entity has been established to fund or develop projects in furtherance of these objectives. Similarly, the CALFED Bay-Delta Program's Ecosystem Restoration Program Plan was intended to provide a "single blueprint" for the ecosystem restoration activities needed to solve problems in the Delta (CALFED Bay-Delta Program Record of Decision, pp. 35-37 [August 2000]); however, despite interest in establishing one, no new entity dedicated to implementing the CALFED ecosystem plan has been created (see, e.g., CALFED Bay-Delta Program, Ecosystem Restoration Program Plan, vol. 3, Strategic Plan, pp. 71-72).

Nevertheless, significant planning, resource management, and restoration work has been taking place in the Delta, albeit by a variety of state agencies. For example, the California Bay-Delta Authority Act placed the state responsibility for overseeing the Ecosystem Restoration Program Plan initially with the California Bay-Delta Authority, then with the Department of Fish and Game. (Wat. Code, § 79441, subd. (c).) These agencies, along with the Resources Agency, have facilitated implementation of restoration work in the Delta in conformance with the CALFED ecosystem plan through grant programs established with funding in various bond acts.

(See, e.g., Wat. Code, §§ 78535, 78535.5, 78536, 78536.5 [\$ 60 million in Prop. 204 funds for CALFED “Category III” restoration projects]; *id.*, §§ 78684, 78684.4, 78684.6 [\$ 390 million in Prop. 204 funds to implement CALFED Ecosystem Restoration Program]; *id.*, §§ 79550, subd. (e) [\$ 180 million in Prop. 50 funds to implement CALFED Ecosystem Restoration Program].) The Department of Fish and Game and the Department of Water Resources, along with many other federal, state, and local agencies are actively involved in implementing restoration projects in and outside the Delta that carry out the restoration goals and objectives described in the CALFED Ecosystem Restoration Program Plan. (See, e.g., CALFED Bay-Delta Program Performance Tracking, Ecosystem Restoration Program, available at http://www.calwater.ca.gov/PerformanceTracking/about_program_performance.html.) Thus, ecosystem restoration in the Delta has been coordinated to a degree through the CALFED Program and its grant programs, but a single, centralized governing entity is lacking.

In the view of the Legislative Analyst, “the primary advantage of state conservancies is their ability to focus state resources on a specific geographical area of exceptional statewide value.” (Legislative Analyst’s Office, California’s Land Conservation Efforts: The Role of State Conservancies (2001), at p. 13.) In light of the Delta Vision process, it appears likely that there would be agreement that the Delta region qualifies as “a geographical area of exceptional statewide value.”

IV. Financing Options

Finding a reliable financing source will be a prerequisite to the creation of any new governance entity for the Delta. While the complexities of government agency finance mechanisms and the state budget process are beyond the scope of this paper, we have included a brief discussion of how the various state agencies mentioned above receive funding, with the hope that this may be helpful to the Delta Vision governance discussion.^{11/}

Money for the state’s land conservancies and regional land use agencies generally comes from one of four sources^{12/}:

11. This discussion intentionally excludes the Tahoe Regional Planning Agency because that agency receives its funding jointly from the states of California and Nevada, and therefore provides a less apt example for the current discussion. (See Compact, Art. VIII [requiring TRPA to annually establish funds necessary for its activities and to apportion certain percentage to the four counties in the Tahoe region, and the remainder to the two states].)

12. Most agencies are also authorized to accept contributions or donations. (See, e.g., Pub. Resources Code, § 30344.5 [authorizing the Coastal Commission to apply for and accept

- The general fund — The predominant fund for state government financing, it includes revenues not specifically designated for a particular purpose. The general fund is primarily based on tax revenues. (See Department of Finance Glossary of Terms, available at www.dof.ca.gov/fisa/bag/dofgloss.htm,)
- Special funds — These funds are created either by statute, or administratively under Government Code section 13306, and used to budget and account for taxes, licenses, and fees that are restricted by law for particular activities. (*Ibid.*)
- Bond funds — These funds include the many general obligation bonds that have been approved through past initiative measures. (*Ibid.*) Typically, there are restrictions on the purposes for which these funds may be used.
- Federal funds — These funds are typically received in trust from a federal agency to be deposited and expended in accordance with state and/or federal rules and regulations. (*Ibid.*)

The purposes for which funds from these sources may be used may also be subject to additional restrictions in the budget. For instance, funds appropriated for “Support” of agency operations may be used to defray salaries and the costs of maintaining an agency office. (*Ibid.*) Funds appropriated for “capital outlay” may be used to acquire land, plan and construct new buildings, expand or modify existing buildings, and/or purchase equipment related to such construction. (*Ibid.*) Appropriations for “local assistance” are available for support of local government or other locally administered activities. (*Ibid.*)

Attachment C provides 2007-08 Budget Act information for the state’s conservancies and regional land use agencies. Notably, the chart demonstrates the differences in size and funding for agencies created before 1980 and those established in the last 25 years. In general, agencies created more recently have more limited budgets and staffing capabilities. More significantly, the information illustrates that general fund support for the land use agencies and conservancies is extremely limited. BCDC will receive \$ 4,420,000 in general funds in this fiscal year, while the Coastal Commission will receive \$ 11,501,000 in general funds. (Budget Act of 2007-08, Stats. 2007, ch. 171/172, items 3820-001-0001, 3720-001-0001.) In contrast, no general funds have been allocated to the Delta Protection Commission. (*Id.*, items 3840-001-0140 and 3840-

grants, appropriations and contributions]; *id.*, § 33211 [authorizing the Santa Monica Mountains Conservancy to accept gifts, donations, or bequests].) It does not appear, however, that such contributions provide a reliable or significant source of funding.

001-0516.) Of the nine conservancies, only the Tahoe Conservancy will received general fund appropriations in the 2007-08 budget year. (*Id.*, item 3125-001-0001.)

Periodically, there have been suggestions that general fund allocations for the Coastal Commission and BCDC should be reduced and that costs for their programs should come in large part from revenues generated by permit fees. Both agencies currently charge fees for their permit activities (see, e.g., Gov. Code, § 66632 [authorizing BCDC to require reasonable filing fees and reimbursements of expenses related to permit applications]), but the amounts they receive would be insufficient to replace their general funds. For instance, we are informed that in fiscal year 2006-07 BCDC collected approximately \$330,000 in permit fees, less than ten percent of the amount of its budget. The agencies have raised their fees from time to time, but we understand that they have resisted efforts to raise their fees to cover all program costs, noting that this would require significant fee increases and that, in any event, fees are an unstable sources of funding because of fluctuations in regulatory activity from year to year. They also have raised policy questions about whether permit applicants from a limited geographical area should be required to finance programs intended to benefit the state as a whole. As a result, permit fees generated by BCDC are deposited in the general fund. Coastal Commission permit fees initially also went to the general fund, but since 1997 have been placed in the Coastal Access Account in the Coastal Conservancy Fund. This special fund is used by the Coastal Conservancy to finance coastal access projects. (Pub. Resources Code, § 30620, subd. (c)(2).)

In addition to the Coastal Access Account, a variety of other special funds provide financing for the conservancies. As an example, all of the conservancies rely on money appropriated from the California Environmental License Plate Fund. (Pub. Resources Code, § 21191.) This funding source can be used for conservancy activities such as acquiring and restoring land, protecting threatened and endangered plants and animals, fish and wildlife habitat protection, acquisition of sensitive natural areas for parks, and actions to reduce the effects of soil erosion and sediment discharge into Lake Tahoe. (*Id.*, §§ 21190, 21191.) In the 2007-08 Budget Act, each of the conservancies received funds from this source for support, while the Coastal Conservancy received additional license plate funds for capital outlay. (Budget Act of 2007-08,

Stats. 2007, ch. 171/172.)^{13/} The Coastal Commission received license plate funds as well, but for local assistance purposes. (*Id.*, item 3720-101-0371.)

Another example of special funds are those established by statute as the depository for civil fees and penalties obtained by BCDC (Gov. Code, § 66647 [Bay Fill Cleanup and Abatement Fund]), and the Coastal Commission (Pub. Resources Code, § 30823 [Violation Remediation Account of the Coastal Conservancy Fund]) in enforcement actions. In the 2007-08 Budget Act, BCDC received a portion of its funding from the Bay Fill Clean Up and Abatement Fund for support. (Budget Act of 2007-08, Stats. 2007, ch. 171/172, item 3820-001-0914.) Funds in the Violation Remediation Account of the Coastal Conservancy Fund may be appropriated to the Coastal Conservancy for projects in the coastal zone.

In recent years, an overwhelming amount of funding for the actions of the state conservancies has come through various bond acts, such as:

- the Safe, Clean, Reliable Water Supply Act of 1996 (Wat. Code, § 78500 et seq. [Proposition 204])
- the Safe Neighborhood Parks, Clean Water, Clean Air, and Coastal Protection Bond Act of 2000 (Pub. Resources Code, § 5096.300 et seq. [Proposition 12])
- the Safe Drinking Water, Clean Water, Watershed Protection, and Flood Protection Act of 2000 (Wat. Code, § 7900, et seq. [Proposition 13])
- the California Clean Water, Clean Air, Safe Neighborhood Parks, and Coastal Protection Act of 2002 (Pub. Resources Code, § 5096.600 et seq. [Proposition 40])
- the Water Security, Clean Drinking Water, Coastal and Beach Protection Act of 2002 (Wat. Code, § 79500, et seq. [Proposition 50]); and

13. The support line items can be found at 3760-001-0140 (Coastal Conservancy); 3125-001-0140 (Tahoe Conservancy); 3810-001-0140 (Santa Monica Mountains Conservancy); 3825-001-0140 (San Gabriel and Lower Los Angeles Rivers and Mountains Conservancy); 3830-001-0140 (San Joaquin River Conservancy); 3835-001-0140 (Baldwin Hills Conservancy); 3845-001-0140 (San Diego River Conservancy); 3850-001-0140 (Coachella Valley Mountains Conservancy); 3855-001-0140 (Sierra Nevada Conservancy). The capital outlay line item can be found at 3760-301-0371 (Coastal Conservancy).

- the Safe Drinking Water, Water Quality and Supply, Flood Control, River and Coastal Protection Act of 2006 [Proposition 84] (Pub. Resources Code, § 75001 et seq.).

In the 2007-08 Budget Act, for example, the Tahoe Conservancy will receive in excess of \$ 40 million in bond funds appropriated from Propositions 12, 40, 50, and 84 for support, local assistance, and capital outlay. (See Budget Act of 2007-08, Stats. 2007, ch. 171/172, item 3125-001-0005, 3125-001-6029, 3125-001-6031, 3125-001-6051, 3125-101-0005, 3125-101-6029, 3125-101-6031, 3125-101-6051, 3125-301-6051; see also summary information available at www.ebudget.ca.gov/Enacted/StateAgencyBudgets/3000/3125/departments.html.) The Coastal Conservancy will receive in excess of \$ 126 million in bond funds. (See generally Budget Act of 2007, *supra*, items listed under 3760.) The bond fund allocations for the regional land use agencies and the conservancies are summarized in Attachment D.

Bond funds also are frequently subject to specific restrictions or directions. For instance, Proposition 12 specifically allocated \$35,000,000 to the Santa Monica Mountains Conservancy to “acquire, improve, or restore park, wildlife, or natural areas, including areas near or adjacent to units of the state park system whenever such units may be situated within a local jurisdiction within the Santa Monica Mountains zone or Rim of the Valley Trail Corridor. (Pub. Resources Code, § 5096.353.) And bond acts may contain general restrictions on the use of funds. As an example, acquisitions of land using bond funds allocated by Proposition 12 were limited to purchases from willing sellers. (*Id.*, § 5096.307.) Finally, bond funds typically are subject the requirements of general bond law. (See, e.g., Gov. Code, § 16727 [restricting the uses that may be made of bond funds, but authorizing their use to fund the administrative costs of agency grant programs].)

We have not attempted to research potential sources of federal funding. We do note, however, that federal funds are integral to the state’s coastal programs. (16 U.S.C. § 1455 [authorizing grants for purposes of administering state coastal programs]; Pub. Resources Code, §§ 30334.5 [authorizing the Coastal Commission to accept grants] and 30340.5 [concerning the use of federal grant funds].) And federal funding has been available throughout the CALFED process for planning and implementation. (See, e.g., California Bay-Delta Environmental Enhancement and Water Security Act, Pub.L. No. 104-208, 100 Stat. 3009-748, Div. E, Tit. 1 [making available \$ 143 million for each of fiscal years 1998, 1999, and 2000 for ecosystem restoration purposes]; Water Resources Development Act of 2000, Pub.L. No. 106-541, 114 Stat. 2572, § 509 [providing \$ 5 million for 2002 through 2005]; CALFED Bay-Delta Authorization Act, Pub.L. No. 108-361, 118 Stat. 1681, Tit. 1 [making \$ 389 million in federal funds available for 2005 to 2010].)

John Kirlin, Executive Director
October 15, 2007
Page 34

V. Conclusion

This letter was intended to provide you with basic information about different governance options that may be relevant to the discussion of the Delta Vision. The discussion features examples from within California government involving a state role in regional land use planning, methods the state has used to coordinate with the federal government, non-regulatory approaches to achieving state goals and objectives, and finance options within the existing state budget framework. We hope this information proves useful as you work with the Blue Ribbon Task Force to develop the Delta Vision.

Sincerely,



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Deputy Attorney General

For EDMUND G. BROWN JR.
Attorney General

Attachments

Attachment A	The State's Four Regional Land Use Agencies
Attachment B	The State's Nine Regional Land Conservancies
Attachment C	2007-08 Budget Information for Regional Land Use Agencies and Conservancies
Attachment D	State Bond Funds for Regional Land Use Agencies and Conservancies

Institutional Options for Delta Vision Governance

Attachment A

The State's Four Regional Land Use Agencies

Agency	Year Created	Geographic Region	Board Composition	Permit Authority and/or Review Authority	State Agency Compliance With Plan Required?
California Coastal Commission	1976	California coastline from Oregon to Mexico and specified upland areas	15 members 6 public at large 6 local 3 state agency (non voting)	direct permit authority, consistency review for federal activities, appellate review authority over local decisions	yes
San Francisco Bay Conservation and Development Commission	1965	San Francisco Bay, 100-foot band around Bay Suisun Marsh	27-member board 20 local 5 state agency 2 federal agency	direct permit authority + consistency review for federal activities + review authority in Suisun Marsh	yes
Tahoe Regional Planning Agency	1969	Lake Tahoe Basin	15-member board 7 California 7 Nevada 1 presidential appointee (non voting)	direct permit authority	yes
Delta Protection Commission	1992	primary and secondary zones of Sacramento-San Joaquin Rivers Delta	23-member board 13 local 7 state agency 3 governor appointees	appellate review authority over local decisions	no

Institutional Options for Delta Vision Governance

Attachment B

The State's Nine Regional Land Conservancies *

Conservancy	Year Created	Geographic Region	Sunset Provision
State Coastal Conservancy	1976	California Coast and San Francisco Bay lands	No
Santa Monica Mountains Conservancy	1980	Santa Monica and Santa Susanna Mountains and nearby lands	No
California Tahoe Conservancy	1984	California side of Lake Tahoe Basin	No
San Joaquin River Conservancy	1995	San Joaquin River Parkway on both sides of river between Friant Dam and Hwy 99 crossing	No
Coachella Valley Mountains Conservancy	1996	Mountains surrounding Coachella Valley from Palm Springs to Salton Sea	No
San Gabriel and Lower Los Angeles River and Mountains Conservancy	1999	Low Los Angeles River and San Gabriel River watersheds	No
Baldwin Hills Conservancy	2000	Two square mile Baldwin Hills region of Los Angeles Basin	Yes, 2008
San Diego Conservancy	2002	San Diego River area	Yes, 2010
Sierra Nevada Conservancy	2004	Sierra Nevada region, spanning 22 California counties	No

* Table based on information contained in LAO 2007, p. 6.

Institutional Options for Delta Vision Governance

Attachment C

2007-08 Budget Information for Regional Land Use Agencies and Conservancies

Code	Department	Enacted 2007-08*		
		Positions	Total State Funds	Total All Funds
3720	<u>Coastal Commission</u>	<u>144.9</u>	<u>12,799</u>	<u>17,200</u>
3820	<u>SF Bay Conservation & Development Comm</u>	<u>41.8</u>	<u>4,420</u>	<u>5,305</u>
3840	<u>Delta Protection Commission</u>	<u>3.1</u>	<u>169</u>	<u>412</u>
3125	<u>Tahoe Conservancy</u>	<u>48.4</u>	<u>45,512</u>	<u>46,227</u>
3760	<u>State Coastal Conservancy</u>	<u>76.7</u>	<u>132,940</u>	<u>141,287</u>
3810	<u>Santa Monica Mountains Conservancy</u>	<u>5.2</u>	<u>18,312</u>	<u>19,241</u>
3825	<u>San Gabriel/Lower LA River/Mtns Consvcy</u>	<u>9.0</u>	<u>38,834</u>	<u>38,834</u>
3830	<u>San Joaquin River Conservancy</u>	<u>3.0</u>	<u>456</u>	<u>1,456</u>
3835	<u>Baldwin Hills Conservancy</u>	<u>3.0</u>	<u>3,490</u>	<u>4,490</u>
3845	<u>San Diego River Conservancy</u>	<u>2.0</u>	<u>299</u>	<u>299</u>
3850	<u>Coachella Valley Mountains Conservancy</u>	<u>3.0</u>	<u>11,878</u>	<u>11,943</u>
3855	<u>Sierra Nevada Conservancy</u>	<u>25.5</u>	<u>21,404</u>	<u>21,604</u>
	<u>* Amounts in thousands</u>			

Information in this table derived from

<http://www.ebudget.ca.gov/Enacted/StateAgencyBudgets/3000/agency.html>

Institutional Options for Delta Vision Governance

Attachment D

State Bond Funds for Regional Land Use Agencies and Conservancies

<u>Code</u>	<u>Department</u>	<u>Enacted</u> <u>2007-08*</u>
		<u>Bond</u> <u>Funds**</u>
3720	<u>Coastal Commission</u>	<u>0</u>
3820	<u>SF Bay Conservation & Development Comm</u>	<u>0</u>
3840	<u>Delta Protection Commission</u>	<u>0</u>
3125	<u>Tahoe Conservancy</u>	<u>40,423</u>
3760	<u>State Coastal Conservancy</u>	<u>126,642</u>
3810	<u>Santa Monica Mountains Conservancy</u>	<u>18,065</u>
3825	<u>San Gabriel/Lower LA River/Mtns Consvcy</u>	<u>38,515</u>
3830	<u>San Joaquin River Conservancy</u>	<u>115</u>
3835	<u>Baldwin Hills Conservancy</u>	<u>3,161</u>
3845	<u>San Diego River Conservancy</u>	<u>0</u>
3850	<u>Coachella Valley Mountains Conservancy</u>	<u>11,580</u>
3855	<u>Sierra Nevada Conservancy</u>	<u>17,500</u>
	<u>* Amounts in thousands</u>	
	<u>** Bond funds described in budget summaries as</u> <u>"selected bond funds"</u>	

Information in this table derived from

<http://www.ebudget.ca.gov/Enacted/StateAgencyBudgets/3000/agency.html>